

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ORLON JEROME SIMPSON

§

v.

§ CIVIL ACTION NO. 6:13cv104

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Orlon Simpson, proceeding *pro se*, filed this application for the writ of habeas corpus challenging the legality of prison disciplinary action taken against him. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Simpson was ordered to pay the filing fee or to provide an application for leave to proceed *in forma pauperis* which was accompanied by a certified inmate trust account data sheet, as required by 28 U.S.C. §1915(a)(2). Simpson received a copy of this order on February 5, 2013, but has not complied with this order, nor responded in any way.

On April 24, 2013, the Magistrate Judge issued a Report recommending that Simpson's petition be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Simpson received a copy of this Report on April 30, 2013, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district

court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 8) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the Petitioner Orlon Simpson is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate refers only to an appeal of the present habeas petition and shall have no effect upon Simpson's right to refile his petition, should he choose to do so, or to challenge the disciplinary conviction through any other lawful means. Finally, it is

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 30th day of May, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE